

FLETCHER De FISHER
FISHER INTERNATIONAL INC. (ON RECONSIDERATION)

IBLA 85-413

Decided February 26, 1988

Petition for reconsideration of Fletcher De Fisher, 93 IBLA 68 (1986), affirming two decisions of the Idaho State Office, Bureau of Land Management, which declared five unpatented mining claims and eight millsite locations null and void ab initio.

Petition dismissed.

1. Rules of Practice: Appeals: Reconsideration

By regulation effective July 6, 1987, a petition for reconsideration of a Board of Land Appeals decision involving a subject matter other than surface mining must be filed within 60 days after the date of such a decision. Petitions for reconsideration of such decisions issued prior to July 6, 1987, must have been filed on or before Sept. 7, 1987.

APPEARANCES: Royce B. Lee, Esq., Idaho Falls, Idaho, for appellants.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

By our opinion Fletcher De Fisher, 93 IBLA 68 (1986), this Board affirmed two decisions of the Idaho State Office, Bureau of Land Management (BLM), dated January 28, 1985, declaring five unpatented mining claims and eight millsite locations null and void ab initio. By motion received October 15, 1987, appellants petitioned the Board for reconsideration of its decision as to five of the millsite locations. We find that appellant's petition was not timely filed and must be dismissed.

The Board's decision in Fletcher De Fisher, supra, constituted Secretarial review of the decision appealed from and was final for the Department. 43 CFR 4.1(b)(3), 4.21(c). A party may, however, file a petition requesting that the Board reconsider its decision. In extraordinary circumstances for sufficient reason presented by a party in its petition for reconsideration, the Board will grant such a petition. When reconsideration is granted, the Board will reexamine its prior decision in light of arguments and matters raised by the petitioner and may reaffirm, modify, or vacate its previous decision, or take other action deemed necessary and appropriate. See, e.g., Amax Lead Co. of Missouri (On Reconsideration).

99 IBLA 313 (1987); Golden Valley Electric Association (On Reconsideration), 98 IBLA 203 (1987); Mingo Oil Producers (On Reconsideration), 98 IBLA 133 (1987).

The regulation governing the filing of petitions for reconsideration of Board of Land Appeals' decisions involving matters other than surface mining ^{1/} states in part: "A petition for reconsideration shall be filed within 60 days after the date of a decision." 43 CFR 4.403. The regulation was promulgated June 5, 1987, with an effective date of July 6, 1987. 52 FR 21307, 21308 (June 5, 1987). Prior to the promulgation of this regulation, the timeliness of petitions for reconsideration was governed by the portion of 43 CFR 4.21(c) requiring that petitions be "filed promptly." Under this language it was held that a petition for reconsideration was untimely when it was filed more than 6 months after the decision on the appeal was issued. Pathfinder Mines Corp. (On Reconsideration), 76 IBLA 276 (1983). In ruling on the question, Judge Stuebing stated:

Both the public at large and the agencies which administer Federal lands have a right to rely on, and to act upon, decisions of this Board, which are final for the Department. To reconsider such decisions long after they are rendered could severely prejudice those who have taken actions in the interim based on such reliance.

Id. at 278. Petitions for reconsideration must now be filed within the 60-day period defined by the promulgated regulation. ^{2/}

Our decision in Fletcher De Fisher, supra, is dated July 15, 1986, approximately 1 year prior to the effective date of the regulation establishing the 60-day time period for filing a petition for reconsideration. The petition for reconsideration before us was received October 15, 1987, which was 15 months after the date of our initial decision and more than 3 months after the effective date of the regulation. We cannot apply the regulation to hold that the petitioners before us were limited to a 60-day period following the date of the initial decision. Conversely, however, we cannot apply the regulation to permit a petition to be filed which unquestionably would have been dismissed as untimely under Pathfinder Mines Corp.

^{1/} The regulation governing reconsideration of decisions involving surface mining is found at 43 CFR 4.1276(a). This regulation requires the filing of petitions for reconsideration within 30 days from the date of the decision.

^{2/} The requirement that a petition for reconsideration be filed in 60 days is qualified by the grace period provided by 43 CFR 4.401(a). Under the provision late receipt of a petition will be waived

"if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed."

Id.

(On Reconsideration), supra, but for the promulgation of the regulation. Even construing the new regulation generously, we can hold only that it permitted petitions for reconsideration of previously issued decisions to be filed within 60 days of its effective date. Even under this construction the petition before us is untimely and must be dismissed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is dismissed.

R. W. Mullen
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge